



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0825; FRL-9996-07-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Emissions Statements Rule Certification for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision formally submitted by the State of Delaware. Under section 182 of the Clean Air Act (CAA), states' SIPs must require stationary sources in ozone nonattainment areas to report annual emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC). This SIP revision provides Delaware's certification that its existing emissions statements program satisfies the emissions statements requirements of the CAA for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA is approving Delaware's emissions statements program certification for the 2008 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0825. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not

publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2043. Ms. Calcinore can also be reached via electronic mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. See 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every five years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. See 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is

referred to as the 2008 ozone NAAQS. See 73 FR 16436 (March 27, 2008).

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, New Castle County and Sussex County in Delaware were designated as marginal nonattainment for the 2008 ozone NAAQS. New Castle County was designated as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS nonattainment area, which includes the following counties: New Castle in Delaware; Cecil in Maryland; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania. 40 CFR 81.308, 81.321, 81.331, and 81.339. Sussex County was designated marginal nonattainment as the Seaford 2008 ozone NAAQS nonattainment area, which includes only Sussex County. 40 CFR 81.308.

Section 182 of the CAA identifies plan submission requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO_x and VOC to the state. However, states may waive this reporting requirement for classes or categories of stationary sources that emit under 25 tons per year (tpy) of NO_x or VOC if the state provides an inventory of emissions from these classes or categories of sources as required by CAA sections 172 and 182. See CAA section 182(a)(3)(B)(ii).

On March 6, 2015, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including the emissions statements requirement of CAA section 182(a)(3)(B) (2015 final rule). 80 FR 12264. Per the preamble to EPA's 2015

final rule, the source emissions statements requirement applies to all areas designated nonattainment for the 2008 ozone NAAQS. See 80 FR 12264, 12291. The preamble to EPA's 2015 final rule also states that most areas that are required to have an emissions statements program for the 2008 ozone NAAQS already have a program in place due to a nonattainment designation for an earlier ozone NAAQS. *Id.* The preamble to EPA's 2015 final rule states that, "If an area has a previously approved emissions statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS." *Id.* In cases where an existing emissions statements rule is still adequate to meet the emissions statements requirement under the 2008 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval in the SIP to meet the requirements of CAA section 182(a)(3)(B). *Id.* In this statement, states should identify how the emissions statements requirement of CAA section 182(a)(3)(B) are met by their existing emissions statement rule. *Id.*

In summary, Delaware is required to submit, as a formal revision to its SIP, a statement certifying that Delaware's existing emissions statements program satisfies the requirements of CAA section 182(a)(3)(B) and covers Delaware's portions of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS nonattainment area (i.e. New Castle County) and the Seaford 2008 ozone NAAQS nonattainment area (i.e. Sussex County).

II. Summary of SIP Revision and EPA Analysis

On June 29, 2018, the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), submitted, as a formal revision to its SIP, a

statement certifying that Delaware's existing SIP-approved emissions statements program under 7 DE Administrative Code 1117 Section 7.0 satisfies the emissions statements requirement for the 2008 ozone NAAQS.

On April 9, 2019 (84 FR 14075), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed to approve, as a SIP revision, Delaware's June 29, 2018 emissions statements certification as satisfying the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. The rationale for EPA's proposed action can be found in the April 9, 2019 NPRM and will not be restated here.

III. Public Comments and EPA Response

EPA received comments on the April 9, 2019 NPRM from three anonymous commenters. EPA received a comment on April 11, 2019 that was supportive of EPA's proposed action; EPA is not responding to that comment. The other two comments and EPA's responses are discussed below. The comments EPA received are included in the docket for this action, available online at www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0825.

Commenter 1: On April 9, 2019, EPA received an anonymous comment on the NPRM. The commenter emphasizes the importance of emissions reporting of NO_x and VOC in ozone nonattainment areas. The commenter expresses concern regarding states' ability to waive the emissions reporting requirement "if they emit under 25 tons per year of NO_x and/or VOC." The commenter states that the purpose of emissions reporting is to understand the total amount of emissions in a state "no matter how little they emit" and suggests that this would assist with the identification and resolution of air quality problems. The commenter also expresses concern that if a state has waived the emissions statements requirements and emissions in a state are low at

the beginning of the year and then increase, it would take a year to identify the increase in emissions which may delay potential actions by EPA.

EPA Response: Section 182(a)(3)(B)(ii) of the CAA permits states to waive the emissions statements requirement of CAA section 183(a)(3)(B)(i) for any class or category of stationary sources which emit less than 25 tpy of NO_x or VOC if the state provides an inventory of emissions from these classes or categories of sources as required by CAA sections 172 and 182. As discussed in the NPRM, Section 7.1 of Delaware's emissions statements provisions under 7 DE Administrative Code 1117 Section 7.0 states that Delaware may, with EPA approval, "waive the emissions statements requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO_x or VOCs if the class or category is included in the base year and periodic ozone SIP emission inventories, and the actual emissions were calculated using EPA-approved emission factors or other methods acceptable to the EPA." This is consistent with CAA section 182(a)(3)(B)(ii) and is more stringent than the requirements of the CAA as it requires EPA approval to waive the emissions statements requirement. Therefore, EPA continues to find that Delaware's emissions statements provisions under 7 DE Administrative Code 1117 Section 7.0 meet the requirements of CAA section 182(a)(3)(B)(ii) for the 2008 ozone NAAQS.

In addition, EPA disagrees with the commenter that permitting states to waive the emissions statements requirement for classes or categories of sources that emit less than 25 tpy of NO_x or VOC will prevent EPA from obtaining data regarding a state's total emissions of NO_x and VOC or delay EPA in identifying increases in emissions. As stated previously, states are required by CAA section 182(a)(3)(B) to have an emissions reporting program (also referred to as an

“emissions statements” program) requiring sources located in ozone nonattainment areas that emit 25 tpy or more of NO_x or VOC to annually report actual emissions to the **State** (emphasis added). The emissions statements requirement of CAA section 182(a)(3)(B) is separate from the requirements for the state to submit emissions data to EPA. States are required to submit emissions data to EPA under the Air Emissions Reporting Rule (AERR). 40 CFR, part 51, subpart A.¹ The AERR requires states to submit to EPA complete and comprehensive data on emissions from certain point, nonpoint, onroad, and nonroad sources triennially. In addition, the AERR requires annual reporting for larger, Type A, point sources.² Pursuant to 40 CFR 51.20, all anthropogenic stationary sources must be included in the emission inventory as either point or nonpoint sources; if a facility’s emissions are too low to be considered a “point source”, the emissions must be reported as nonpoint sources.³ Therefore, the AERR provides for the reporting of complete and comprehensive data on a state’s total emissions of NO_x and VOC by the state to EPA. While states may use data submitted by sources through their emissions statements program to satisfy the AERR, the AERR is separate from the emissions statements requirement of CAA section 182(a)(3)(B). Therefore, the waiving of a class or category of source from a state’s emissions statements program does not affect the state’s obligation to report emissions from these sources to EPA under the AERR.

In addition, pursuant to CAA section 182(a)(3)(B)(ii), states may only waive the emissions statements requirement for any class or category of sources that emit less than 25 tpy of NO_x or

¹ For more information on the AERR, see “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,” May 2017, included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR- 2018-0825.

² The emission thresholds by pollutant for treatment of point sources can be found in Table 1 of Appendix A of the AERR at 40 CFR, part 51, subpart A.

³ Pursuant to 40 CFR 51.15(b), sources on tribal lands are excluded from the AERR.

VOC if the state includes that class or category of sources in the base year and periodic inventories required by CAA section 172(c)(3), 182(a)(1), and 182(a)(3)(A) and emissions are calculated using emission factors established by EPA or other methods acceptable to EPA (emphasis added).⁴ EPA uses the emissions data submitted by the states under the AERR to build the National Emissions Inventory (NEI), which in turn may be used by the states for their base year and periodic emission inventories.⁵ A state's waiver of the emissions statements requirement for a class or category of sources that emit less than 25 tpy of NO_x or VOC does not waive the requirement for the sources to be captured in the state's emissions inventory. Sources will be captured as either point or nonpoint sources in the emission inventories regardless of whether a state has waived them from their emissions statements program. Therefore, EPA will still have comprehensive data on emissions in a state that meets the emissions inventory requirements of the CAA. Regarding the concern about data not being submitted regularly enough, CAA section 182(a)(3)(B) only requires that "[s]ubsequent statements shall be submitted at least every year thereafter." Therefore, Delaware's requirement for sources to submit emissions statements annually complies with the requirements of the CAA.

Commenter 2: EPA received an anonymous comment on April 19, 2019 inquiring how EPA's proposed action in the April 9, 2019 NPRM will affect corporations incorporated in Delaware and if these corporations will be required to change their business practices as a result of this rulemaking.

⁴ See "Draft Guidance on the Implementation of an Emission Statement Program", July 1992, included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR- 2018-0825.

⁵ The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

EPA Response: EPA's approval of Delaware's emissions statements certification for the 2008 ozone NAAQS will not change the existing emission statement requirements for corporations incorporated in Delaware. EPA's April 9, 2019 NPRM proposed to approve, as a SIP revision, Delaware's certification that the State's existing, SIP-approved emissions statements provisions under 7 DE Administrative Code 1117 Section 7.0 continue to satisfy the emissions statements requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. Delaware's existing emissions statements provisions were first approved by EPA into the Delaware SIP on April 29, 1996 (61 FR 7415) for a previous NAAQS and are therefore already effective. EPA's NPRM only proposed to find that these existing, unchanged provisions continue to satisfy the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. Because Delaware's emissions statement requirements are unchanged, this SIP approval will not add any additional requirements for sources in Delaware. Therefore, EPA's approval of Delaware's emissions statements certification for the 2008 ozone NAAQS will not change the previously applicable emissions statement requirements for emission sources located in Delaware and therefore will not likely cause sources in Delaware to change their business practices. To the extent that the commenter is asking whether companies incorporated in Delaware but with facilities outside of Delaware that emit NO_x or VOC will be affected by Delaware's emission statement regulation, the answer is no. Sources outside of Delaware will be required to report their emissions of NO_x and VOC according to the regulations of the state in which that source is located.

IV. Final Action

EPA is approving, as a SIP revision, the State of Delaware's June 29, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

Delaware's emissions statements certification certifies that Delaware's existing SIP-approved

emissions statements program under 7 DE Administrative Code 1117 Section 7.0 satisfies the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action approving Delaware’s emissions statements certification for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2019.

Diana Esher,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding the entry “Emissions Statements Rule Certification for the 2008 Ozone NAAQS” at the end of the table to read as follows:

§ 52.420 Identification of plan.

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* *			
Emissions Statements Rule Certification for the 2008 Ozone NAAQS	Delaware’s portions of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS nonattainment area (i.e. New Castle County) and the Seaford 2008 ozone NAAQS nonattainment area (i.e. Sussex County)	06/29/2018	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Certification that Delaware’s SIP-approved regulations under 7 DE Administrative Code 1117 Section 7.0 Emission Statement meet the emissions statements requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS.